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Amended Petition.

(3)

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALLPUR

W.P.NO. 4378 OF 1995

Petitioner : Jawahar Saw, S/o Rameshwar Saw, Aged about 43 years, Proprietor of M/s Anil and Brothers, Sirsa Road, Supel-, Bhilai, District-Durg M.P.

Versus

Respondents :

1. State of Madhya Pradesh Through the Secretary, Department of Food and Civil Supplies, Vallabh Bhawan, Bhopal M.P.
2. The Commissioner (Revenue), Raipur Division, Raipur, M.P.
3. The Additional Commissioner (Food and Civil Supplies) Office of the Commissioner (Revenue) Raipur Division, Raipur, M.P.
4. The District Magistrate-cum-Collector, Durg (Food Branch), District Durg, M.P.

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CLERK to A. G. BILASPUR

WRIT PETITION UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA

XI-HC-78

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... WP No. 4378/95 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	08.11.2005 Shri P. Diwakar, Sr. Advocate with Shri P.R. Patankar, Advocate for the petitioner. Shri Sandeep Dubey, Govt. Advocate for the State. By this writ petition under Articles 226 & 227 of the Constitution of India the petitioner has questioned the legality, propriety and correctness of the order dated 15.11.1995 (Annexure P-6) passed by the Appellate Authority affirming the order dated 20.4.1995 (Annexure P-4) passed by learned District Magistrate-cum-Collector, Durg whereby learned District Magistrate after holding the petitioner herein guilty for violation of licensing condition Nos.3 (1), 4, 5, 6 (1), 8(1), 8 (2) & 9; Clauses 9 & 10 of M.P. Kerosene Licensing Order, 1979 and also for violation of the provisions of Clause 3 (2) of the Registration on Use and Fixation of Ceiling Price Order, 1993 punished the petitioner under Clauses 10 & 14 of the above Order, 1979 and cancelled the license as well as forfeited the security amount deposited by the petitioner herein. Brief facts relevant for the disposal of this writ petition is that the petitioner is proprietor of a firm functioning under the name and style of M/s Anil & Brothers, Sirsa Road, Supela, Bhilai, District Durg. The petitioner's firm is engaged in the business of sale and distribution of kerosene oil through hawkers under the license granted to the petitioner by respondent No.4. On 9.2.1994 the Additional Collector, Durg Shri G.S. Mishra along with Food Inspectors Shri B.S. Sharma and Shri T.C. Tiwari conducted a raid	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

in the premises of petitioner's firm at Bhilai and thereafter, on 1.3.1994 a show cause notice was issued to the petitioner. The petitioner submitted reply to the said show cause notice. Thereafter, the District Magistrate, Durg vide order dated 20.4.1995 cancelled the license of the petitioner and directed for forfeiture of security amount deposited by the petitioner. Being aggrieved by the said order the petitioner preferred an appeal under Clause 16 of the Order of 1979 before the appellate authority, which came to be dismissed vide order-dated 15.11.1995.

The case of the petitioner is that no proper opportunity of hearing was given to him and the representation made by him was considered at the back of the petitioner without giving any opportunity of hearing. The petitioner denied the charges of irregularities levelled against him & his firm and that the finding recorded by the District Magistrate and affirmed by the appellate authority are perverse and illegal. Moreover, after filing of this writ petition in the criminal case arising out of the same incident the learned Special Judge vide judgement dated 12.7.1999 acquitted the petitioner from all the charges levelled against the petitioner.

I have heard learned counsel for the parties.

Learned Sr. Counsel for the petitioner submitted that the charges on which the petitioner's license has been cancelled and security amount has been forfeited were before the criminal Court

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

and the criminal Court after recording the evidence of parties acquitted the petitioner vide judgment dated 12.7.1999 (Annexure P-8) holding that all the charges are not proved. Therefore, the petitioner's petition deserves to be allowed.

On the other hand, learned Government Advocate for the State Shri Dubey supported the impugned orders.

Having heard learned counsel for the parties, I have perused the writ petition and judgment (Annexure P-8) rendered by learned Special Judge, Durg.

Perusal of judgment shows that the respondent/State failed to prove the charges against the petitioner's firm for violation of licensing conditions and the provisions of the Order of 1993. It has been mentioned in the judgment that on facts the provisions of Order of 1993 are not attracted. It has further been mentioned that so far as the violation of licensing conditions Nos.3 (1), 4, 5, 6 (1), 8(1), 8(2) & 9 is concerned, the State has not been able to prove the same. Therefore, after trial learned Special Judge reached to the conclusion that the charges levelled against the petitioner were not proved. As such on this ground, the order dated 20.4.1995 passed by learned District Magistrate and the order-dated 15.11.1995 passed by the appellate authority are liable to be quashed.

In the result, the petition of the petitioner is allowed, the impugned orders dated 15.11.1995 (Annexure P-6) & 20.4.1995 (Annexure P-4) are hereby quashed.

Certified copy as per rules.

Sd/-
L.C.BHADOO
Judge